Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of

Joint Application by	)	
SBC Communications Inc.,	)	
for Provision of In-Region, InterLATA	)	WC Docket No. 03-167
Services in Illinois, Indiana,	)	
Ohio and Wisconsin	)	

REPLY COMMENTS OF MCI

SBC has not resolved any of the issues that MCI raised in its initial Comments in this proceeding. Indeed, the most notable development in the period since Comments were filed is that the Department of Justice again raised serious concerns about SBC's systems in its August 26 Evaluation and refused to support SBC's section 271 application for Illinois, Indiana, Ohio and Wisconsin. As MCI explained in its opening Comments and in its Michigan filings, SBC needs to make significant improvements prior to obtaining section 271 approval for any of the former Ameritech states. The most serious regionwide issues relate to line splitting and billing. However, even if the Michigan application were to be granted, the current four-state application must be denied due to the inadequacies in the performance remedy plans on which SBC relies. MCI will not reiterate the points it has previously made, but briefly discusses new developments since we filed our Comments.

SBC's Line Splitting Processes Remain Deficient. In its *Triennial Review Order*, the Commission emphasized that its existing precedent requires ILECs to provide the OSS needed for CLECs to take advantage of line splitting. *Triennial Review Order* ¶ 252 & n.752. Yet SBC alone among ILECs has implemented a line splitting process that does not provide even the basic

functionality of an effective process. Almost all of the problems with SBC's process stem from its decision to treat line splitting orders for UNE-P customers as separate orders for new loops and ports (requiring OSS development to implement these new order types), rather than as orders simply to change cross connects at the central office.

In an August 21, 2003 *ex parte*, SBC reiterates many of its indefensible claims purporting to justify use of new loops to serve line splitting customers who drop DSL. We first note that this is only one – albeit a critical one – of the many problems associated with SBC's process. SBC remains silent with respect to all of the other problems.

As for the particular problem regarding line splitting customers who wish to disconnect their DSL, SBC's answers have not improved over time. SBC says that if CLECs want to ensure that a line splitting customer continues to be served on the same loop after dropping DSL, the CLEC can itself combine the unbundled loop and switch-port in the CLEC's collocation space. Aug. 21 *ex parte* at 2. MCI itself has chosen to do this because the alternative – using SBC's disconnect process – is so poor. But if the CLEC does this, it will use up capacity on its splitters for customers who are no longer using DSL because the splitter will continue to be connected to the data channel facility. Only months after launching DSL service, MCI is already running out of capacity on some of its splitters because of the inability to smoothly disconnect the data while preserving voice for line splitting customers. Moreover, as MCI has previously explained, because it maintains the existing service arrangement rather than submitting a disconnect order to SBC, MCI must use a more complicated process to submit maintenance requests. In addition, MCI must pay a significantly higher monthly rate for an xDSL capable loop than it would have to if MCI submitted a disconnect order and thus instead paid for an ordinary loop. (SBC charges higher rates for xDSL capable loops than for ordinary loops even though, in reality, the loops are

the same.) But MCI has little choice because of the significant risks if MCI were to submit disconnect orders to SBC.

DOJ urges the Commission to determine whether SBC's line splitting and UNE-P processes are non-discriminatory before granting this application. DOJ Eval. at 16. SBC claims that its process of replacing loops for line splitting customers who disconnect DSL is non-discriminatory. Aug. 21 *ex parte* at 2. That is not so. The closest comparison to a line splitting customer who disconnects DSL is an SBC retail customer who disconnects DSL. But SBC does not install a new loop in response to such an order, demonstrating the discriminatory nature of its process.

SBC argues that its systems are designed to install a new loop in response to a disconnect process. Aug. 21 *ex parte* at 2.[1] But SBC's deficient design does not excuse its discriminatory process. Indeed, every other ILEC has a process under which UNE-P customers who order line splitting continue to be treated as UNE-P customers. This avoids not only the problem with installation of a new loop in response to a request to disconnect DSL, but also the many other problems associated with SBC's process. SBC asserts that Verizon only installed its superior line splitting process in response to CLEC requests and a state commission order. Aug. 21 *ex parte* at 4. But every ILEC with whom MCI does business, not just Verizon, has a process for ordering line splitting that avoids the fundamental deficiencies with SBC's process. This includes BellSouth and Qwest, as well as Verizon.

Moreover, although SBC professes its willingness to work with CLECs to adopt a better line splitting process, its letter focuses *only* on the process regarding disconnection of DSL for

[1] SBC also says that reuse of the loop would occur in *some* cases if the CLEC requested a due date for the new UNE-P five days after the due date for the disconnect order on the loop. Aug. 21 *ex parte* at 2 n.7. But if the CLEC did this, the customer would be without dial tone for at least five days, which is unacceptable.

line splitting customers, presumably because that is the issue on which it has received regulatory pressure. In its recent Evaluation, DOJ noted the importance of CLECs being able to reuse line splitting lines. DOJ Eval. at 16. SBC is totally non-responsive on the other issues raised by MCI and other CLECs. And even on the disconnect issue, SBC does not commit to adopting a better process.

SBC says that it is working to develop a new process that would "in most cases" force reuse of the existing loop. Aug. 21 *ex parte* at 3. SBC blames the delay in instituting such a process on CLECs, claiming they have been unwilling to engage in a test of such a process. But as MCI has detailed at length, *see* Lichtenberg MI III Reply Decl. ¶¶ 29-33, MCI Comments Tab 3, it is SBC who delayed responding to MCI's requests for a new process. Time and time again on this issue, as with many others, SBC has failed to bring proper resources to the CLEC User Forum or Change Management Forum and has not brought effective answers to issues CLECs have raised.

Despite SBC's claims regarding CLEC failure to take advantage of a test offer, to MCI's knowledge SBC has not made any general offer to CLECs for testing a new line splitting process. It is true that on July 30, 2003 (after SBC made a similar offer in an *ex parte* in this proceeding), SBC informed MCI that it could test a new process, but said that in return MCI would have to agree to waive certain performance metrics for line splitting orders. MCI said that it would not waive the metrics and also explained that it needed documentation describing the new process before it was willing to subject customers to a new process. SBC still has not provided such documentation, stating only that its local service representatives would add a reuse indicator and a related order indicator to the MCI LSR once it fell to manual in the local service center. Nonetheless, on August 20, SBC did finally provide a second, very brief verbal description of its proposed process (although it did not provide a trial plan or trial parameters).

Despite these severe limitations, MCI agreed to a test. However, MCI is still waiting for the list of contacts and testing dates that SBC said it would provide.

More fundamentally, in discussing the proposed test, SBC was unwilling to commit to MCI that it would implement the new process even if testing proved successful. And if SBC does implement the new process, SBC has not explained why only "most" disconnect orders will permit reuse of the existing loop (or which orders will not permit reuse of the existing loop). Finally, although SBC's tone has softened in its latest *ex parte*, SBC has not backed away from its assertion that CLECs will have to agree to waive certain performance measures before SBC will implement a different process. If SBC believes these issues "can be overcome," Aug. 21 *ex parte* at 4, it should put forth a proposal that it can show is reasonable.

Before it obtains section 271 authority, SBC should at least commit to implementation of a line splitting process that treats line splitting orders for UNE-P customers as what they are – orders to change cross connects, rather than requests for a new loop and port. This would help resolve all of SBC's line splitting problems, not just the disconnect issues. But SBC obstinately refuses to address this issue. And it has not even resolved the "sub-problems" created by this general issue. Until it does, SBC's application must be denied.

SBC's Billing Issues Unresolved and Growing. DOJ concluded in its August 26 Evaluation that it is unable to support SBC's four-state application because of ongoing concerns about SBC's billing accuracy. DOJ Eval. at 8-15. This is so, DOJ notes, despite its efforts to obtain information from SBC that would give it a basis to support the application. However, based on all information to date, DOJ continues to have the serious billing concerns that it raised in its Michigan III Evaluation in July. Apart from new problems raised by CLECs, DOJ points out that SBC's own submissions admit that CLECs continued to suffer a variety of billing accuracy problems. *Id*. at 9. Indeed, MCI has not yet received a substantive response from SBC

concerning the 3500 lines on which SBC bills telco to MCI, but which are not in MCI's database and for which SBC does not report any traffic usage, as discussed in MCI's initial Comments.

We also raised the fact in MCI's initial Comments that CLECs had listed 65 billing disputes for resolution in the new docket opened in Wisconsin. MCI Comments at 9. In the intervening weeks CLECs have added another 22 disputes to be resolved, for a total of 87. Given the region-wide billing system used by SBC, it is no surprise that these issues are not simply of concern to Wisconsin. Indeed, parties to the Wisconsin billing proceeding have been advised that Staff at another state commission in the SBC Midwest region has asked to listen in to the technical conferences on billing issues to be held by the Wisconsin Commission on September 15-17 and October 1-3. Billing concerns were also directly raised by other state commissions, including the Indiana Commission, as DOJ noted. DOJ Eval. at 10.

MCI has added one additional issue, on which SBC owes it many millions of dollars, to the Wisconsin list of billing concerns. On March 22, 2002, the Wisconsin Commission issued a decision setting forth the methodology for calculating new SBC UNE rates in Wisconsin. PSCW Docket 6720-TI-161. That order required SBC to make a compliance filing and, to eliminate any incentive for SBC to delay, required SBC to true-up the rates ultimately approved back to May 21, 2002 (60 days after the decision). The compliance proceedings went on until July 9, 2003, when the Wisconsin Commission issued its UNE Compliance Order. SBC has been obligated since then to fulfill its true-up obligations, but has failed to do so. MCI raised this issue with SBC in a series of e-mails from July 11 to August 25, and while SBC advised that the true-up process would be addressed, it took no action to do so. Subsequent inquiries from MCI did not result in any action to resolve this significant issue until MCI filed an additional billing issue in the Wisconsin billing proceeding on August 28. SBC contacted MCI that evening with additional representations that the true-up would be addressed shortly.

SBC Refusing to Pay Interest Required by ICA. MCI noted in its initial Comments (at n.4) that SBC has agreed to make payments to MCI, including payments of interest, to resolve a number of issues, but had not yet made the promised payments. SBC has since made clear to MCI that it will not pay interest at the rate required by our interconnection agreement, and will only discuss payment of a smaller lump sum. Given the magnitude of SBC's errors, this is not a trivial matter. Interest alone from these resolved disputes will run well over a million dollars. SBC clearly should make these payments – and agree to abide by its contractual obligations – prior to the Commission contemplating a grant of section 271 authority.

SBC's Metrics Reporting Flawed. BearingPoint still has not completed its test of whether SBC can accurately measure its performance with its existing metrics, but it is clear from the face of SBC's reports that SBC continues to have problems.[2] For example, the MCI-specific data reported by SBC for Illinois (PM 6) in the first seven months of this year show that SBC's performance on FOCs that fall to manual supposedly has improved to the point where manual activity takes less than one-tenth the time of electronic processes.[3] Electronic FOCs for ordinary UNE-P service were completed over the seven months in around one-half hour and improved to a low of .29 hours in July 2003. However, the slower electronically submitted but

[2] SBC is also apparently attempting to secretly manipulate its performance data. On August 28, 2003, parties to the Wisconsin docket governing the Master Test Plan (PSCW Docket No. 6720-TI-160) received a copy of an August 27 e-mail from PSCW counsel (attached as Tab 1) advising that "over the past several months," SBC has repeatedly requested that Staff apply revised business rules that became effective in March 2003 to performance measurement data for 2002. SBC did not include CLECs in any of these contacts. According to the e-mail, PSCW Staff "has repeatedly indicated that it does not have the authority to grant such a request," and that granting the request would modify the Master Test Plan in violation of Wisconsin Commission orders. SBC's apparent motivation is to improve its performance results through test changes made without public knowledge. Such attempts by SBC to manipulate its performance data without CLEC awareness or involvement should concern this Commission as it evaluates this application.

[3] MCI asked SBC about this data on August 27 and looks forward to receiving an explanation.

manually handled FOCs for the same type orders were taking more than 2.5 hours in the first four months of the year, and then dropped in May to .67 hours, then dropped further in June to .26 hours (lower than electronic FOCs), and then supposedly further dropped by a magnitude of ten to only .02 hours in July. Something is amiss. In its Evaluation, DOJ notes the importance of a stable and reliable metrics reporting system to help ensure that local markets remain open after section 271 authority is granted. DOJ Eval. at 19. SBC needs to make further improvements to satisfy that goal.

OSS Defects Worsening. The number of defects reported by SBC for its latest EDI release, version 6.0, has significantly increased since initial Comments were filed. MCI previously noted that as of August 5, there were 44 defects for release 6.0, but as of August 27 that number has inexplicably jumped to 79 defects.

Inadequate Remedy Plans. The most notable difference between SBC's four-state application and its Michigan application is the adequacy of remedy plans to prevent backsliding. While MCI has not raised concerns about the Michigan remedy plan, we are very concerned about the so-called "compromise" remedy plan in Illinois, Indiana and Wisconsin for the reasons explained in MCI's initial comments and set forth further below.[4] This key difference between Michigan and the other states was reaffirmed on August 26, when the Michigan Commission issued an order denying SBC's effort to keep the "K table" from being eliminated and rejecting SBC's end run effort to adopt its "compromise" remedy plan in place of plans developed in lengthy generic proceedings with input from all sides. *Order Denying Rehearing*, MI PSC Case No. U-11839 (August 26, 2003), http://www.cis.state.mi.us/mpsc/orders/comm/2003/u-11830_08-26-2003.pdf

[4] Ohio is also inadequate due to its failure to adopt a state-specific plan; parties in Ohio are permitted to opt in to the "compromise" remedy plan, with all its shortcomings.

Although there is much rhetoric about SBC having adequate net revenues at stake with its compromise remedy plan, in fact the compromise plan is inadequate to prevent backsliding and does not match the level of other states that have received section 271 authorization. This is discussed in detail by the Staff of the Illinois Commission in their April 18, 2003 Brief on Exception of the Staff of the Illinois Commerce Commission (attached as Tab 2). In that document, the Staff explains point by point their concerns with the ALJ's proposed final order. Although the Illinois Commission ultimately did not adopt their position, the Staff's careful analysis of how the compromise plan is inferior to the state's initial plan is instructive.

The Illinois Staff begins by analyzing and concluding that, contrary to SBC's claims, penalties under the state's preferred remedy plan (the "0120 Plan") were not excessive. The Staff calculated that SBC can provide an unacceptable level of service, by meeting only 80% of its performance measures for a whole year, and pay only about 18% of its net local revenues in penalties – far less than the theoretical cap of 36%.[5] *Id*. at 97, 100.

The Staff then goes on to compare SBC's compromise remedy plan to the 0120 Plan and concludes (at 131-32) that the "proposed Compromise Plan does not provide a meaningful incentive for SBC Illinois to provide wholesale service to its competitors at the levels required by the performance measures." The Staff explains that the "multiple structural flaws" in the SBC proposed remedy plan "seem designed to prevent the Company from ever reaching the recommended total annual remedy cap." *Id*. at 132. Specific flaws with the compromise plan are set forth in detail, including problems with the PM weightings, concerns with index value calculations, and the impact of Tier 1 caps. *Id*. at 118-131.

[5] Illinois Staff also noted that a number of states, including Rhode Island, Maine, Massachusetts, Florida, Vermont, New Hampshire and Delaware set their caps at 39%, while Georgia set its cap at 44%. Tab 2 at 100-101.

In addition to substantive inferiority, however, the most basic difference between the compromise remedy plans and plans approved in previous section 271 applications is the role of the states in choosing remedy plans adequate for local conditions, as discussed in MCI's initial Comments. The chosen remedy plans in Illinois, Indiana and Wisconsin were set aside due to SBC challenges; the preferred Indiana plan is on appeal; the Wisconsin Commission specifically declined to endorse the compromise plan, which phases out after four years; and the compromise plans in Illinois and Wisconsin do not provide a way to modify the performance remedies. The public interest deserves better than that.[6]

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For the foregoing reasons, SBC's section 271 application should be denied.

Respectfully Submitted,

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August 29, 2003

[6] In response to questions asked by FCC Staff, there are a number of high level differences that make the compromise remedy plan inferior to the California remedy plan including: (i) the California plan detects more failures than the compromise plan because of the critical values used; (ii) remedies increase in California based on the harm to individual CLECs and not just the aggregate failure rate; (iii) the escalation factors for duration ramp up more quickly in the first three months in California (before problems can cause irreversible harm); and (iv) the California Commission ordered the plan and appears to control changes to the plan, rather than the compromise plan in Illinois and Wisconsin where performance remedies can only be changed by the commissions if SBC agrees.

Certificate of Service

I, Keith L. Seat, do hereby certify that on this 29th day of August, 2003, I have electronically served a true and correct copy of MCI's Reply Comments in WC Docket No. 03-167 on the following:

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